

COUNTY OF KAUAI  
Minutes of Meeting  
**OPEN SESSION**

Board/Committee:		Public Access, Open Space and Natural Resources Preservation Fund Commission	Meeting Date	January 12, 2017	
Location	Mo`ikeha Building – Meeting Room 2A/2B		Start of Meeting: 1:04 p.m.	End of Meeting: 2:25 p.m.	
Present	Members: Chair Theodore Blake, Vice Chair Karen Ono, Randall Blake, Joseph Figaroa, Dorothea Hayashi, Shaylyn Kimura Also present: Deputy County Attorney Jodi Higuchi-Sayegusa; Planning Department Staff: Kaaina Hull, Nani Sadora, Duke Nakamatsu, Jody Galinato; Boards and Commissions Staff: Administrator Jay Furfaro				
Excused					
Absent	Patrick Gegen, Jett Jasper				
SUBJECT		DISCUSSION		ACTION	
Call To Order				Chair Pro Tem Figaroa called the meeting to order at 1:04 p.m.	
Roll Call		The meeting commenced with a roll call of the Commissioners and Planning Staff.  <u>Mr. Furfaro updated the Commission on the status of the membership and terms.</u>  Mr. Furfaro stated that Karen Ono is in her first term. Her current term will end December 31, 2018. She served for a partial term that was less than 2/3 of the year so this is actually her first term. She is a Mayoral appointee for the Lihue district.  There is a vacancy for the Kekaha Waimea area that is a Mayoral appointment. They have a candidate who has not gone through the interview process yet, Barbara Bennett from the Kauai Magazine. She has to successfully pass her interview with Council.  Theodore Blake represents the Koloa area and was nominated by the		There were six (6) members present constituting a quorum.	

SUBJECT	DISCUSSION	ACTION
	<p>Council and will be in his second term expiring December 31, 2018.</p> <p>Dorothea Hayashi is a Council appointee representing the Hanapepe Elelee area, starting her second term that will expire December 31, 2018.</p> <p>Shaylyn Kimura is an at large appointee by the Mayor in her first renewed year of 2017 to 2019.</p> <p>Randall Blake is starting his second term and is the Kapaa Wailua area representative nominated by the Mayor.</p> <p>Joseph Figaroa replaced a partial term from Beryl Blaich but in his third year appointed year which will expire at the end of 2017.</p> <p>Jett Jasper replaced McClintock as a partial term. He is in his first term and he is expiring December 31, 2017.</p> <p>Mr. Gegen is appointed by the Commission. He is not appointed through the Office of Boards and Commissions, nor from the Council, nor from the Mayor. He is at large by the Commission members. His term expires on the December 31, 2017. Mr. Furfaro noted they are encroaching on challenges with attendance. Everything he has seen does not imply that Mr. Gegen had excused absences. He has placed and recorded with date and time three phone calls to Mr. Gegen because they need to be in touch. They have a challenge because that position is nominated and voted on by the Commission.</p> <p>Commissioner R. Blake questioned that his sheet shows Commissioner Figaroa expiring mid July to which Mr. Furfaro replied that if he started</p>	

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	<p>when he was temporarily appointed to fill a vacancy, it could be interpreted as such, but when he was sworn in, he started a new cycle which goes all the way to December 31.</p> <p>Commissioner R. Blake questioned that he is actually on through December to which Mr. Furfaro replied yes, of this year.</p> <p>Commissioner T. Blake noted that he saw Commissioner Gegen at the gas station so he is on-island to which Mr. Furfaro replied that he has attempted to reach out to him. He assumes that his next recourse is to send certified mail.</p>	
<p><b>Selection of Chair and Vice Chair</b></p>	<p>Chair Pro Tem Figaroa stated that nominations were in order for Commission chair.</p> <p>Commissioner T. Blake nominated Commissioner Ono to which she declined.</p> <p>Chair Pro Tem Figaroa nominated Commissioner Kimura to which she declined.</p> <p>Commissioner Ono questioned Commissioner R. Blake to which he replied no, he has time restraints. He has a class and needs to leave early. It would not be fair to the Commission to shorten the meetings.</p> <p>Commissioner Hayashi stated that for physical reasons she was not able.</p> <p>Mr. Furfaro noted that the Commission can defer because they have no nominations. They can ask people when they have a full body.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Hull noted that the rules dictate that the chair is for one year only.</p> <p>Mr. Furfaro stated that he gave his opinion. They can just defer. He has had an interpretation before for the Salary Commission. That is his input.</p> <p>Ms. Higuchi-Sayegusa stated that it could be like a pro tem if the Chair would like to carry over to the next meeting but to the extent they could try to resolve it today, that would be the best.</p> <p>Chair pro tem Figaroa suggested tabling it for now and coming back to it later in the agenda to which Mr. Furfaro suggested that there be some understanding that he will be conducting the meeting even though they are visiting it at the end.</p> <p>Ms. Higuchi-Sayegusa stated that it would be similar to deferring and serving beyond his one year to which Mr. Furfaro replied that it would be on the record.</p> <p>Mr. Furfaro noted there are two commissioners absent to which Ms. Higuchi-Sayegusa replied that they have the option to nominate them too.</p> <p>Commissioner T. Blake questioned that they are missing two Commissioners to which Commissioner Hayashi replied Commissioners Jasper and Gegen.</p> <p>Commissioner Ono questioned the number of meetings Commissioner Jasper has missed to which Mr. Furfaro replied he does not show him attending since October.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Higuchi-Sayegusa suggested a recess to think it over.</p> <p>Chair pro tem Figaroa called a recess at 1:19 p.m.</p> <p>Chair pro tem Figaroa called the meeting back to order at 1:25 p.m.</p> <p>Chair pro tem Figaroa asked for nominations for Chair.</p> <p>Commissioner Hayashi nominated Theodore Blake for Chair.</p> <p>Chair pro tem Figaroa nominated Shaylyn Kimura for Chair.</p> <p>There were no requests for secret ballot vote.</p> <p>Chair pro tem Figaroa asked for a show of hands vote.</p> <p>Chair T. Blake thanked the Commission for their vote of confidence and opened the floor for nominations for vice chair.</p> <p>Commissioner Kimura nominated Karen Ono for vice chair.</p> <p>Commissioner Ono nominated Joseph Figaroa for vice chair.</p>	<p>It was moved by Karen Ono and seconded by Randall Blake to close nominations for Chair. The motion carried by unanimous voice vote 6-0.</p> <p>Theodore Blake was elected Chair by the following show of hands vote: 4-Blake, 1-Kimura, 1-Abstain</p> <p>It was moved by Randall Blake and seconded by Karen Ono to close nominations for vice chair. The motion carried by unanimous voice vote 6:0.</p> <p>Karen Ono was elected vice chair by the</p>

SUBJECT	DISCUSSION	ACTION
		following show of hands vote: 4-Ono, 2-Figaroa
<b>Approval of Agenda</b>	Chair T. Blake requested a motion to approve the agenda.	It was moved by Karen Ono and seconded by Randall Blake to approve the agenda. The motion carried by unanimous voice vote, 6:0.
	<p>Chair T. Blake announced that there was a Native Hawaiian Law training at the War Memorial Convention Hall. This was the second time he attended this training. It was a great presentation. It is amazing how many laws are on the books that back Hawaiian culture and tradition. He was happy to see Commissioner Kimura and some of the staff there.</p> <p>Mr. Furfaro noted that Jodi Higuchi-Sayegusa had contributions in the law book that was published and available for sale. There were 103 attendees from Kauai County.</p> <p>Chair T. Blake noted this was the most attendees they ever had including on Oahu.</p> <p>Ms. Sadora stated that the department purchased a copy of the book and commissioners can request to see it.</p> <p>Commissioner R. Blake asked if the session was recorded.</p> <p>Mr. Furfaro stated there are summary documents in his office for the sections presented and he can make copies if desired.</p> <p>Chair T. Blake noted that three primers have already been done for iwi, water, and culture &amp; traditional practices. The primers are from OHA and each has an accompanying CD with all the HRS pertaining to the subjects.</p>	

SUBJECT	DISCUSSION	ACTION
	They're excellent.	
<b>Minutes of the meeting(s) of the Open Space Commission</b>	<u>F.1. Meeting of November 10, 2016</u>	It was moved by Karen Ono and seconded by Shaylyn Kimura to approve the minutes of November 10, 2016. The motion carried by unanimous voice vote, 6:0.
<b>Receipt of Items for the Record</b>	There were no items to receive for the record.	
<b>Hearings and Public Comment</b>	<u>H.1. All remaining public testimony pursuant to HRS 92 (Sunshine Law)</u>  Chair T. Blake asked if there was public testimony to which there was none.	
<b>Unfinished Business (for Action)</b>	<u>H.1. Review and discussion of a 4.860 acre archaeological parcel located at approximately 950 feet west of the Kukona A Laa Street and Halalu intersection, further identified as Tax Map Key (TMK): (4) 2-8-031-199. [Deferred from 12/10/15, 1/14/16, 3/10/16, and 4/14/16, No action taken 7/14/16 due to voting quorum, Preliminary report accepted 8/16/16.]</u>  Ms. Sadora stated that the attorneys are still working out the paperwork with the current land owners. They have been communicating but they haven't received information back. They are sending additional communication and will hopefully have it resolved by the next meeting.  Vice Chair Ono questioned if they are deferring this item to the next meeting to which Mr. Hull replied that the Department's recommendation is to receive the report.	Chair T. Blake recused himself at 1:41 p.m. and turned the meeting over to Vice Chair Ono.

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	<p>Mr. Hull noted they are trying to reach out to the land owner through her attorneys, but there is not much impetus for her to engage in the acquisition. As they go through acquisitions they are finding that either you have unwilling land owners where you have to go condemnation proceedings, or there isn't much motivation. It takes a lot of work on behalf of the land owner or the representative to get the necessary documentation together. It seems she isn't that motivated to get the documents together. The attorneys representing this site recognize the potential for the site as well as the ease for their client should it be handed over to the County but for whatever reason she is not that motivated. She just has to sign a document.</p> <p>Commissioner Kimura questioned if there is any kind of process or timeline that situations like this fall in to. It sounds very open and we could be waiting for years.</p> <p>Mr. Hull stated that aside from this body deciding to move toward condemnation, it's just getting the land owner to the table to sign the necessary documents. All the owners in the hui have essentially signed the documents that give this parcel to her and she demonstrated a willingness to take it verbally, however, she hasn't actually signed the document taking on that property. Technically she can't negotiate with the County until she accepts ownership.</p> <p>Mr. Hull stated that the Commission could defer to the next meeting. The Department is recommending just receiving it for the record and as soon as they get correspondence back from the owner or representatives they will request the Chair place this back on the agenda. He just wanted to update</p>	



SUBJECT	DISCUSSION	ACTION
	the Commission that they are working to get a response.	It was moved by Shaylyn Kimura and seconded by Joseph Figaroa to receive for the record. The motion carried by unanimous voice vote, 6:0.
<b>New Business (for Action)</b>	<p><u>K.1. Review and discussion of a 0.3709 acre parcel located in Hanalei, Wainiha Ahupuaa, Halelea Moku, further identified as Tax Map Key (TMK) (4) 5-8-012:002</u></p> <p>Ms. Sadora read the Planning Department's preliminary report into the record (on file).</p> <p>Commissioner Figaroa questioned the size of the lot to which Ms. Sadora replied 0.3709 acres.</p> <p>Ms. Sadora distributed colored copies of the ad from the land owner. She noted the topographical view of the lot on page 2.</p> <p>Mr. Hull noted that it is approximately 120 feet in depth from the western side of the property and approximately 150 feet from the northern side.</p> <p>Commissioner Figaroa questioned that the natural setback comes in to almost half of the property to which Mr. Hull replied correct.</p> <p>Commissioner Figaroa questioned that it is a willing land owner to which Mr. Hull replied yes, it is on the market. He noted that because it is on the open market, the owner has signed all the necessary documents in comparison to the other previous property where there was a potential willing land owner but not all the paperwork is together.</p>	

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	<p>Commissioner Figaroa questioned that because the setback is approximately half of the property if it could give the Commission some negotiation room regarding price to which Ms. Higuchi-Sayegusa replied that it is something to weigh in the Commission's consideration on whether or not to go forward. The mechanics of the actual sale will come later on.</p> <p>Chair T. Blake questioned the opinions of the realtors on the Commission.</p> <p>Commissioner Kimura noted that the property is frequented by fisherman. She can see how it could benefit north shore residents. She sees the building potential even if the setback is 50 percent because it would still leave you with over 8,000 square feet to build a home and there is not a lot of vacant land out there for under a million dollars currently on the market. Definitely nothing beyond Hanalei.</p> <p>Commissioner Ono stated that as far as the price goes, that is negotiable, but within a reasonable price. She questioned the permit for a dwelling unit that was indicated on the County tax record. Apparently there was a permit pulled in 2008.</p> <p>Jody Galinato from the Planning Department stated that there was a building permit issued on this property, they didn't build in time, and it expired. When they came in to renew it she refused to sign it because they needed to recertify the shoreline.</p> <p>Mr. Hull stated that the way the County's shoreline setback ordinance functions is that properties this close to the shoreline have to certify the shoreline which is a fairly lengthy process. The surveyor certifies the shoreline and ultimately submits it to the State DLNR office which will</p>	

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	<p>hold and conduct a public hearing on the property where members of the public can walk with the State surveyor and discuss and give input on where the certified shoreline should be. Then they go back and certify wherever they feel is the appropriate certified shoreline. From that line they can have an array of setbacks. At a minimum it would be 40 feet from the certified shoreline. More than likely a proposed house on this property would require a variance permit. There is an avenue to still put a house on the property.</p> <p>Commissioner Hayashi questioned if the need to recertify the shoreline would give the Commission more time to which Mr. Hull replied not necessarily.</p> <p>Mr. Hull stated that a potential buyer can go into an agreement with the property owner that they will buy it contingent upon permit approvals for a house. You have to do a certified shoreline, then you have to go to the State office, then you have to go to the Planning Commission, and if you are going for a variance in the setback area, you also have to do an environmental assessment. They could have a contractual agreement where they will buy the property and take it off the market contingent upon those things happening. They could hold it in abeyance for two or three years. Another avenue is they could buy it now and get the permits later. There is potential for the property to be picked up tomorrow.</p> <p>Chair T. Blake suspended the rules and received public testimony from Caren Diamond.</p> <p>Ms. Diamond thanked the Commission for their consideration of this property. She stated that after the double bridges and you come around the</p>	

SUBJECT	DISCUSSION	ACTION
	<p>coast to Wainiha, the lot is right there and is called Kepuhi Point. As soon as you get there the breeze greets you and is an amazing fishing spot where locals have always fished. The line on the map is the shoreline. It is not the shoreline setback. The property has dropped in price over a million dollars because of that line and the low to no buildability. When the shoreline was first certified the people who owned the lot got building permits with a 20 foot setback. It was a large house. It never got built and they tried to sell it with the house plans. After a couple of years the plans and shoreline expired and the setback law changed. The lot has almost no buildability. Somebody can buy it and seek a variance and build a small house, but that's the reason the price is not extravagantly expensive. They dropped the price and are trying to sell it as is. Any potential buyer who did their research would probably walk away and not buy it. She stated that for the County's purposes of acquisition for preserving the beach and access it's perfect. She would urge the Commission to proceed as expeditiously as they can because things that are for sale can go fast. She urges the Commission to put this beautiful spot into public use. She noted that back in 1990 the Kauai Shoreline and Erosion Management Study referred to this spot and says open zoned beach front properties between the western promontory of Wainiha Bay and the Hanalei Colony Resort should remain in open zoning in order to minimize development, preserve shoreline aesthetics, and preclude any demand for future shoreline protection structures. At the same time these properties should be actively considered for acquisition by either the State or the County because their dimensions are too small to accommodate adequate setbacks and could realistically be termed undevelopable. She thanked the Commission.</p> <p>Commissioner Figaroa agreed with Commissioners Kimura and Ono that there is not a lot of available properties especially for the public to traverse</p>	

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	<p>in that area.</p> <p>Commissioner Figaroa questioned if it is right before the Wainiha General Store to which Ms. Diamond replied it's after the double bridges, after the store, and after the curve and the cliff.</p> <p>Chair T. Blake asked Ms. Diamond to explain that again after the store to which she replied after the store, keep going around the coast and around the cliff, then you come around, and it's right there.</p> <p>Chair T. Blake questioned that you go past the temporary bridges and go up the hill to which Ms. Diamond replied it is right after the hill as you first come into Wainiha.</p> <p>Commissioner Figaroa stated that he thinks the property would be worth their proceeding.</p> <p>Commissioner Hayashi questioned how they can move on it. She stated it would be the simplest form of acquisition.</p> <p>Chair T. Blake stated that any time they have beach front property they should take a close look. It is the same asking price that the owner in Poipu wants for the 10 foot wide 60 feet long easement. This is almost the same price for the entire lot. It's an open space for the public.</p> <p>Commissioner Hayashi questioned how they can move on it to which Ms. Higuchi-Sayegusa replied the Department is asking for preliminary approval to research the specifics.</p>	

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	<p>Mr. Hull stated the Department is recommending preliminary approval which under the new rules sends the Department back to do further research to make sure all the ducks are in a row, then come back to the Commission. He noted the rules do not dictate that the Commission has to send it back to the Department. They could make a motion to initiate the dossier process to Council. He would recommend against it because right now they have Hoban and they don't have all the necessary documentation. At the same time there is a limited window. It really is on the Commission whether or not they want to have the Department spend at least another month doing further research like erosion rate and reaching out to the Parks Department to see if they can facilitate some kind of maintenance. If the Commission decides the window is too tight and they need to move today that is an option.</p> <p>Commissioner Hayashi questioned if it would be possible to have a report by the next meeting to which Mr. Hull replied given that there is a clear desire to move as quickly as possible they will have a report by the next meeting. He hopes for it to be a final report. There are certain criteria to meet final report requirements, but if they are unable to meet final requirements because something is still pending from another Department they will still have a status report.</p> <p>Commissioner Kimura stated that she would like to expedite the process given the nature of days on market and the recent price reduction. She would be in favor of getting the wheels turning as fast as possible.</p> <p>Chair T. Blake questioned if the only thing they can do is get the process started right now. He noted as fast as possible in the County is sometimes 20 miles an hour.</p>	

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	<p>Commissioner Kimura stated that with the price reduction it's up for grabs. She questioned if the County can move fast.</p> <p>Mr. Hull stated that the Department's recommendation is to give preliminary approval so they can do a bit more research, but he did not want to impose upon the Commission that is their only option. They do have the option to make a motion and act upon initiating a dossier process which would automatically send the recommendation up to Council.</p> <p>Commissioner Kimura questioned if they follow the process if there was some way they could very soon express their interest to the land owner that they are exploring acquisition so that they are not thinking that nobody is interested and will bite at the first offer. Explain who the Commission is and what their purpose is and that there is an interest on behalf of the County of Kauai to preserve that space for public use.</p> <p>Mr. Hull replied that the Department can reach out to them.</p> <p>Commissioner Figaroa questioned if that isn't what the Department normally does for preliminary to which Commissioner Kimura replied not necessarily.</p> <p>Mr. Hull stated that historically a lot of the properties the Commission has looked at are not on the market. That's why it has been standard for the Department to reach out to the property owners. Given the fact that this property is on the market somewhat blurs the lines. A standard buyer goes in with the cards covered and will do some negotiation. Being this is an official public body and the Council is, the cards are revealed saying they</p>	

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	<p>are appropriating money to purchase this property. The property owner will be hard to negotiate.</p> <p>Commissioner Kimura stated that they don't have to state a price, just a letter of interest to which Mr. Hull replied he thinks they can.</p> <p>Ms. Higuchi-Sayegusa noted it is ultimately the Council who makes the calls. She thinks prefacing the interest in the right context would be fine.</p> <p>Commissioner R. Blake questioned that there is nothing to prohibit them from sending out the minutes of this meeting to the property owner of a public meeting notification that this commission has acted for preliminary acquisition to which Mr. Hull replied he would request the motion reflect that.</p>	<p>It was moved by Randall Blake and seconded by Shaylyn Kimura to accept for preliminary action and to include for notification of the sales agent or property owner of their action as the Department sees fit. All were in favor by unanimous voice vote 6:0.</p>
<b>Announcements</b>	<p>Mr. Hull announced that the Hoban property was before the County Council and the Department requested a deferral in order to procure services for an appraiser for not only cost of the property but also damages that would come from condemnation proceedings. He noted that two former commissioners were upset with the Department's request for deferral. He clarified that it was in no part of the Department to obfuscate or cloud the process by requesting the deferral. It was just additional information the Council wanted and they had to procure the services. He also noted that in his discussions with Council he also made reference that the rules had been nebulous as to who was in charge and one of the former</p>	



SUBJECT	DISCUSSION	ACTION
	<p>commissioners took offense to that statement and felt he was calling the Commission nebulous. He clarified he did not feel any member or the Commission is nebulous. It's the rules themselves he felt needed the clarification. He was able to speak to the former commissioners on the side. It went public on Tuesday.</p> <p>Ms. Higuchi-Sayegusa stated that they can schedule a further update on the next agenda.</p> <p>Commissioner R. Blake thanked Commissioner Figaroa for serving as chair and vice chair over the past two years and expressed appreciation for all his efforts.</p> <p>Chair T. Blake announced that he understands that the owner of the Hoban property is asking for \$750,000. It's a very small easement and the owner is saying the peace and quiet is worth that much.</p> <p>Ms. Higuchi-Sayegusa stated that can talk about it at length at the next meeting.</p> <p>Chair T. Blake stated that there is a lot of talk from the public about access to Lawai Kai. The road that goes down to Lawai Kai is going to be closed. That's happening right now so that is why he would like to talk about Hoban and some other properties down there.</p> <p>Mr. Hull stated that because the property is on the Council's agenda, they may continuously put it on the Commission's agenda for updates. He apologized for not bringing it to the Chair's attention that it should have been on the agenda. They'll make sure that as it is on Council's docket</p>	

SUBJECT	DISCUSSION	ACTION
	they will be giving updates to the Commission.	
<b>Next Meeting Date and Agenda Topics for Discussion</b>	<p>Mr. Hull stated that the next meeting date and agenda is scheduled for February 9.</p> <p>Mr. Furfaro stated that as the Commission gets into some of the areas they discussed he questioned if there is a legal guideline they may want an interpretation on in terms of property value versus market assessment versus the sales price and what authority the Commission has to endorse properties that exceed the County's market value or assessed value. He noted they seem to be encroaching on some of these questions with Hoban and Kepuhi. There is a substantial gap between market and assessed value versus sticker price. He questioned if there were legal guidelines the Commission should know about and procurement that deals with overspending on assessed values.</p> <p>Ms. Higuchi-Sayegusa replied that it depends.</p> <p>Mr. Furfaro stated that it is for the Commission to consider if they should get a legal opinion.</p>	
<b>Adjournment</b>		Chair T. Blake adjourned the meeting at 2:25 p.m.

Submitted by:

  
 Duke Nakamatsu, Commission Support Clerk

Reviewed and Approved by:

Theodore Blake, Chair

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- ☒ ( x ) Approved as circulated
- ☐ ( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.